


# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

To: Heather Mackenzie-Campbell, Audit Manager  
From:  Brent Johnson, General Counsel  
Re: Small Claims Fees Collected by Justice Courts  
Date: August 15, 2002

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This memorandum is in response to your question about whether Utah Code Ann. § 78-6-14 requires justice courts to remit \$7.50 from a small claims filing fee to the Judge's Retirement Trust Fund. I feel compelled to conclude that this requirement does not apply to the justice courts, although this conclusion is not exactly in harmony with the plain language of the statute. The relevant statute reads as follows:

(1) Except as provided in this section, the fees for a small claims action in justice court shall be the same as provided in Section 78-7-35.

(2) Fees collected in small claims actions filed in municipal justice court are remitted to the municipal treasurer. Fees collected in small claims actions filed in a county justice court are remitted to the county treasurer.

(3) (a) Seven dollars and 50 cents shall be withheld from the fee for the small claims affidavit and allocated to the Judges' Retirement Trust Fund. Five dollars shall be withheld from the fee for a small claims counter affidavit and allocated to the Judges' Retirement Trust Fund.

(b) Two dollars withheld from the civil filing fee in a court of record as provided in Subsection 63-63a-8(4)(b) shall not apply to the fees collected for small claims actions in justice court.

(4) The fee in the justice court for filing a notice of appeal for trial de novo in a court of record is \$10. The fee covers all services of the justice court on appeal but does not satisfy the trial de novo filing fee in the court of record.

**The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.**

As you indicated in your e-mail, the Administrative Office of the Courts has long interpreted this section as not applying to justice courts. I talked with Rick about this and he informed me that Colin Winchester had previously issued a memorandum which stated that justice courts were not required to submit the \$7.50. I have tried to locate this memorandum, but have not yet been able to do so. However, based on the assertions of Rick and Fred Jayne, it is fairly certain that this memorandum exists and represents the opinion of this office. The opinion was apparently based on the order of the statute. The opinion stated that, because paragraph (2) states that the fee goes to the local entity, paragraph (3) does not apply.

The opinion would appear to be consistent with legislative history and intent, although this is not completely clear. The relevant statutes were changed in 1992. In S.B.197, the Legislature recodified filing fee statutes and at the same time changed or eliminated some fees. Prior to 1992, § 78-6-14 did not contain a reference to the judge's retirement trust fund. The references to the trust fund were found in the district court statutes, but not in the small claims or justice court statutes. Thus, prior to 1992, justice courts did not pay any amounts from the fees into the trust fund. In reviewing the legislative history, it does not appear as if the Legislature intended to change the prior history and begin requiring justice courts to withhold this fee when it recodified the fee provisions.

The only problem with Colin's opinion and the legislative history is that the plain language of the statute does not specifically exempt justice courts. It is also apparent that the Legislature could have specifically exempted justice courts, because they specifically exempted justice courts from the \$2.00 for the Children's Legal Defense Account. There is no reason why they could not have specifically exempted the justice courts from the Judge's Retirement Trust Fund. Nevertheless, it has always been the opinion of this office, and justice courts have been so told, that the justice courts need not submit the relevant fee. Gordon Bisseger informs me that the fund is not dependent on justice court contributions. The fund is currently healthy, and the justice courts have not contributed to this health. Based on the information that I have before me, I am not going to change the office's opinion at this time. If this creates a problem, I suggest looking at a legislative fix to implement legislative intent. Please let me know if you have any questions.